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IN THE

Supreme Court of the United States

ALBERTO R. GONZALES, Attorney General,

Petitioner,

—v.—

PLANNED PARENTHOOD FEDERATION OF AMERICA, INC., *et al.*,

Respondents.

(Caption continued on inside cover)

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* IN SUPPORT OF RESPONDENTS IN RELATED CASE AND BRIEF OF *AMICI CURIAE* RELIGIOUS COALITION FOR REPRODUCTIVE CHOICE AND THIRTY-FOUR OTHER RELIGIOUS AND RELIGIOUSLY AFFILIATED ORGANIZATIONS AND INDIVIDUAL CLERGY AND THEOLOGIANS IN SUPPORT OF RESPONDENTS

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—v.—

LEROY CARHART, M.D., WILLIAM G. FITZHUGH, M.D., WILLIAM H. KNORR, M.D., and JILL L. VIBHAKAR, M.D., on behalf of themselves and the patients they serve,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* IN SUPPORT OF RESPONDENTS IN RELATED CASE

On February 21, 2006, this Court granted *certiorari* in *Gonzales v. Carhart*, No. 05-380, to review the judgment of the U.S. Court of Appeals for the Eighth Circuit striking down the Partial-Birth Abortion Ban Act of 2003, Pub. L. No. 108-105, 117 Stat. 1201 ("Act").

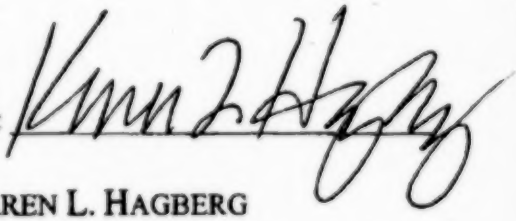
Gonzales v. Carhart raises the same constitutional questions, concerns the same Act of Congress, involves the same petitioner, and will be argued on the same day as the instant case. Furthermore, the information and arguments presented in the brief *amici curiae* are equally relevant to both cases.

Petitioner Gonzales has consented to the filing of this brief *amici curiae* in the instant case, and will not be prejudiced in any way by the granting of this Motion, as Petitioner has the opportunity to respond to this brief in his Reply Brief.

For these reasons, *amici curiae* request that the Court grant them leave to file a jointly-captioned brief in support of respondents, and direct the Clerk to accept this brief out-of-time in *Gonzales v. Carhart*, No. 05-380, and to docket the brief in both cases.

Respectfully submitted,

Dated: September 20, 2006

By: 

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INTEREST OF *AMICI CURIAE*

Amici are religious organizations, religiously affiliated organizations, and individual clergy and theologians dedicated to preserving religious freedom for all persons and, within this context, to ensuring that abortion laws protect a woman's right to act according to her religious beliefs and conscience in this most private, personal decision.[1] The statements of interest provided by individual organizations, representatives, and individuals included in Appendix A to this brief demonstrate the varied and sometimes evolving perspectives on abortion of *amici* and illustrate our point that, for religious reasons that include a responsibility to protect the health of women, many denominations oppose undue restrictions on abortion. Indeed, respect for human life and health is a core value for many religions, including all of the religions represented by *amici*. A full listing of the organizations and individuals signing this brief as *amici curiae* appears in Appendix B.

Because protecting the health of women is a core expression of the religious values of *amici, amici* agree that all women whose health is at risk should be free to seek the safest medical treatment, without governmental coercion or constraint, in making the difficult decision whether to terminate a pregnancy. Other religious traditions and organizations also give primacy to women's health and conscience, as we will show.

---

[1] *Amici* submit this brief *amici curiae* with the consent of the parties. Letters providing consent of the parties are being filed with the Clerk of the Court concurrently with the filing of this brief. Pursuant to Supreme Court Rule 37.6, *amici* state that the brief in its entirety was drafted by *amici curiae* and their counsel. No monetary contribution toward the preparation or submission of this brief was made by any person other than *amici curiae*, their members, or their counsel.

Adherence to these principles, which are based on religious beliefs, compels *amici* to support Respondents in this case.

SUMMARY OF ARGUMENT

As people of faith, *amici* urge the Court to recognize the abundance of religious voices speaking out against the failure of the Partial Birth Abortion Ban Act of 2003 (the "Act") to protect women's health, and not to oversimplify the issue before the Court as one of morality versus immorality. Rather, *amici* urge the Court to heed the mandate of *Casey* "to define the liberty of all, not to mandate [its] own moral code." *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 850 (1992).

Both historically and currently, many religious organizations have given their support to abortion where necessary to protect women's health and, in such circumstances, support a woman's right to the method of abortion that will best protect her health. Internationally, even democracies with either a state religion or a single religious majority have abortion laws that protect women's health. Before this Court's decision in *Roe v. Wade*, 410 U.S. 113 (1973), many Protestant, Jewish, Unitarian Universalist and other clergy and lay people felt it was a religious imperative to support legal abortion as a means of protecting women from dangerous "back alley" procedures. This religious mandate did not end with *Roe*. Rather, many of these religious groups and individuals continue to advocate for legislation that protects women's health.

In light of this diversity of opinion within the U.S. and in the international religious community, *amici* urge the Court not to allow Congress to force a moral consensus, but rather to let the individual women who face the agonizing

decision of whether to terminate a pregnancy or risk their own health do so legally, in consultation and accordance with their own conscience and faith.

ARGUMENT

I. HISTORICALLY, THERE HAS BEEN NO CONSENSUS AMONG AMERICAN RELIGIOUS ORGANIZATIONS CONCERNING REPRODUCTIVE FREEDOM.

It is the position of *amici* that the history of religious conversations on the subject of governmental regulation of reproduction is illuminating and of assistance to this Court. While it may sometimes seem as if a single religious point of view on these matters exists, a historical analysis demonstrates the complexity and multiplicity of religious thought about reproductive rights. Inquiry into two main epochs of transformation in the law of abortion—the time of criminalization efforts during the nineteenth century, and the time around this Court's decision to protect the right of abortion in *Roe*—indicates that public religious discourse on reproductive control has been, alternatively, either notably spare or multiple and plural. Fundamentally, such an inquiry demonstrates that there simply has been no single moral consensus on the issue of reproductive decision-making. And, indeed, while we as Americans may well be familiar with critiques of reproductive rights in the name of religion, it is important to recall that this country has likewise seen defense of these rights by religious institutions that have over time professed their belief in an individual's freedom to exercise her conscience on the matter of abortion.

In the nineteenth century, the medical profession—and not religious groups—spearheaded a movement to expand

the scope of anti-abortion regulation (which had previously permitted abortion prior to fetal quickening). *See* JAMES C. MOHR, ABORTION IN AMERICA: THE ORIGINS AND EVOLUTION OF NATIONAL POLICY, 1800-1900, at 20-45, 147-70 (Oxford University Press 1978); LAURENCE H. TRIBE, ABORTION: THE CLASH OF ABSOLUTES 30-31 (W.W. Norton & Company 1992). The anti-abortion stance of medical practitioners was often grounded in offensive ideology—specifically, in the notion that the prevalence of abortion (particularly among well-to-do American women) was diminishing the native population and thereby threatening the 'ethnic purity' of the nation. *See, e.g.*, HORATIO R. STORER & FRANKLIN FISKE HEARD, CRIMINAL ABORTION: ITS NATURE, ITS EVIDENCE, AND ITS LAW 47-54 (Boston, Little, Brown, and Company 1868).

Generally, "the support offered by organized religion" to the medical community's anti-abortion efforts "was surprisingly limited." MOHR, ABORTION IN AMERICA at 185. Moreover, when some religious persons or groups waded into the anti-abortion discourse, they often invoked the same offensive ideological reasoning as physicians did. For example, the sparse public opposition to abortion by Protestant clergy carried nativist undertones, and was an outgrowth of fear of population decline relative to growing *Catholic* communities. *See, e.g.*, HORACE KNAPP, WOMAN'S CONFIDENTIAL ADVISER ON THE HEALTH AND DISEASES OF WOMEN 78-79 (Providence 1873).

While in the 1800s religious groups had remained for the most part disengaged from the campaign to expand the illegality of abortion, just prior to this Court's decision in *Roe* they were relatively vocal about the abortion issue. But, it is important to note, around the time of *Roe* there was no straightforward or easy consensus on reproductive

rights. Indeed, some religious groups (even prior to *Roe* and in the face of abortion's illegality) argued for reproductive freedom. These arguments were based on at least two principles: the sanctity of the life and health of the woman in the face of dangerous and illegal abortion procedures; and this nation's founding principle of religious freedom and the right to act according to one's own moral judgment.

The most noteworthy example of religious support for legal abortion came in 1967 (six years before this Court's watershed decision protecting the abortion right), when twenty-two clergy founded the Clergy Consultation Service on Abortion. *See* DAVID P. CLINE, CREATING CHOICE: A COMMUNITY RESPONDS TO THE NEED FOR ABORTION AND BIRTH CONTROL, 1961-1973, at 5-7 (Palgrave Macmillan 2006); TOM DAVIS, SACRED WORK: PLANNED PARENTHOOD AND ITS CLERGY ALLIANCES 2-3 (Rutgers University Press 2005).

In the years prior to *Roe*, women seeking to have abortions faced substantial dangers to their lives and health. Strikingly, pre-*Roe*, illegal abortions resulted in approximately 100,000 hospital admissions annually (for complications such as hemorrhaging). Theodore Irwin, *The New Abortion Laws: How Are They Working?*, TODAY'S HEALTH, Mar. 1970, at 21, 21. And, during this time, abortions were the "major cause" of maternal death. *Id.* For example, by the early 1960s, although they "were almost completely preventable," "abortion-related deaths accounted for nearly half, or 42.1 percent, of . . . total maternal mortality" in New York City. LESLIE J. REAGAN, WHEN ABORTION WAS A CRIME: WOMEN, MEDICINE, AND LAW IN THE UNITED STATES, 1867-1973, at 211, 214 (University of California Press 1997). In the face of these

significant dangers from illegal abortions, many clergy were motivated to act to protect women's lives and health.

The Clergy Consultation Service on Abortion sought to protect women by offering counseling and making abortion referrals to safe practitioners. Participating clergy expressed their concern for women in the Service's statement of purpose:

> The present abortion laws require over a million women in the United States each year to seek illegal abortions which often cause severe mental anguish, physical suffering, and unnecessary death of women. . . .
>
> Belief in the sanctity of human life certainly demands helpfulness and sympathy to women in trouble. . . .
>
> Therefore believing as clergymen that there are higher laws and moral obligations transcending legal codes, we believe that it is our pastoral responsibility and religious duty to give aid and assistance to all women with problem pregnancies.

DAVIS, SACRED WORK at 129 (quoting HOWARD MOODY & ARLENE CARMEN, ABORTION COUNSELING at 30-31 (Judson Press 1973)).

As the Service's mission statement suggests, by the time of *Roe*, a significant inversion had taken place. If in the nineteenth century a woman's body had been perceived as an object to be regulated for the purpose of protecting the presumed 'ethnic integrity' of the body politic, during the pivotal time around *Roe* a train of religious discourse

attended to women's own *physical suffering*—and to the corresponding urgency of liberalizing abortion laws.

Finally, in the time of *Roe*, the desire to protect women did not alone motivate clergy. The clergy also advocated in favor of the legality of abortion on the basis of this nation's fundamental guarantee of religious freedom and in the name of religious pluralism. As E. Spencer Parsons, a minister who served as Chairman of the Chicago Clergy Consultation Service on Problem Pregnancies, stated in a 1971 address:

> Physicians, social workers and clergymen should enjoy the freedom of being able to give counsel and information on matters of family health and welfare without being subject to arrest for conspiring to commit an illegal act which is morally a matter of private conscience . . . .
>
> [S]ince we are a people representing many diverse religious traditions, is it not the best public policy, out of respect for our different convictions on the matter, for the State to withdraw from regulating this area of human intimacy?

E. Spencer Parsons, *Abortion: A Private and Public Concern*, 10 CRITERION 2 (Winter 1971).

In sum, far from being in agreement as to the morality of abortion, members of the religious community have held diverse views on the issue historically, and a number of groups have worked to perfect reproductive freedom.

II. THERE IS NO CONSENSUS TODAY AMONG RELIGIOUS COMMUNITIES THAT ABORTION REGULATIONS SHOULD NOT PROTECT THE HEALTH OF THE WOMAN.

Religious communities today represent a diversity of opinion as to the question currently before the court—*i.e.*, whether an exception for the health of the woman is required for legislation criminalizing abortion procedures that many doctors believe are the safest for some women.[2] Many Protestant, Jewish, and Unitarian Universalist organizations support a woman's right to make a decision about abortion in consultation with her doctors and without undue government interference; many others support abortion where necessary to preserve the life or health of the woman. In fact, in recent years in the United States, these groups and individuals have actively fought against legislation—such as the Act—that fails to protect the life or health of the woman.

This plurality of religious opinion is a testament to the intensely personal nature of the decision to terminate a pregnancy. The Act, which strips women of the ability to make crucial decisions about their health and well-being in consultation with their doctors, is an undue government intrusion into a woman's personal, religious, or moral sphere.

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[2] The Act at issue bans procedures from as early as 12 to 14 weeks gestation.

A. Many Religions Support A Woman's Right To Make Reproductive Decisions Without Government Interference.

For many people of faith, freedom to make decisions of conscience without government interference is consistent with their deeply held religious convictions. The Central Conference of American Rabbis, for example, has reaffirmed that the "decision concerning any abortion must be made by the woman and not by the state or any other external agency." 91st Annual Convention of the Central Conference of American Rabbis Pittsburgh Pennsylvania, June 23-26, 1980 (on file with Religious Coalition for Reproductive Choice ("RCRC")).

The Episcopal Church has stated its "unequivocal" opposition to any government act that "abridges the right of a woman to reach an informed decision about the termination of pregnancy." General Convention Statement on Childbirth and Abortion, *Journal of the General Convention of the Episcopal Church 1994*, at 324 (General Convention 1995), *available at* http://www.episcopalarchives.org/cgi-bin/acts_new/acts_resolution-complete.pl?resolution=1994-A054 [hereinafter *1994 General Convention Statement*].

While in 1997 the 72nd General Convention of the Episcopal Church expressed "grave concern" about the use of the "intact dilation and extraction" procedure—which is only one of the procedures banned by the Act—in the third trimester of pregnancy, it made an exception for "extreme situations." It did not change its comprehensive 1994 resolution opposing "any legislative, executive or judicial action limiting decision-making on or access to abortion." General Convention, *Journal of the General Convention of . . . The Episcopal Church, Philadelphia, 1997*, at 270

(New York: General Convention, 1998), *available at* http://www.episcopalarchives.org/cgi-bin/acts/acts_resolution.pl?resolution=1997-D065.

Additionally, the General Convention stated in 1994,

> We therefore express our deep conviction that any proposed legislation on the part of national or state governments regarding abortions must take special care to see that the individual conscience is respected, and that the responsibility of individuals to reach informed decisions on this matter is acknowledged and honored as the position of this Church.

1994 General Convention Statement, at 324.

The Evangelical Lutheran Church in America stated that "there can be sound reasons for ending a pregnancy through induced abortion. . . . We recognize that conscientious decisions need to be made in relation to difficult circumstances that vary greatly." Churchwide Assembly on the Evangelical Lutheran Church in America, *Social Teaching Statement on Abortion* (1991), *available at* http://www.elca.org/socialstatements/abortion.

Recognizing the plurality of opinion on the issue of abortion even within its own membership, the Presbyterian Church (USA) ("PCUSA") stated that, " the decision regarding abortion must remain with the individual, to be made on the basis of conscience and personal religious principles, and free from governmental interference." *Covenant and Creation: Theological Reflections on Contraception and Abortion, Minutes of the 195th General*

Assembly of the Presbyterian Church, at 369 (1983) (on file with RCRC).

This Church's current statement recognizes the "intensely personal" nature of the decision to terminate a pregnancy and the role religion must play in that decision:

> Humans are empowered by the spirit prayerfully to make significant moral choices, including the choice to continue or end a pregnancy. Human choices should not be made in a moral vacuum, but must be based on Scripture, faith, and Christian ethics. For any choice, we are accountable to God; however, even when we err, God offers to forgive us.

PCUSA, *Statement on Post-Viability and Late-Term Abortion* (2006), *available at* http://www.pcusa.org/overture2004-10/postviabilitystatement.pdf.

The National Association of Evangelicals, which "deplores in the strongest possible terms" legalization of abortion for "personal convenience or sociological considerations," nevertheless has held a position since 1973 that states:

> At the same time, we recognize the necessity for therapeutic abortions to safeguard the health or the life of the mother, as in the case of tubular pregnancies. Other pregnancies, such as those resulting from rape or incest may require deliberate termination, but the decision should be made only after there has been medical, psychological and religious counseling of the most sensitive kind.

National Association of Evangelicals, *Abortion* (1973), *available at,* http://www.nae.net/index.cfm?FUSEACTION=editor.page&pageID=154&IDCategory=9.

B. Many Religions Support Abortion Where Necessary To Protect The Life Or Health Of The Woman.

Respect for human life and health is a core value for many religions, including all of the religions represented by *amici*. For some faiths, this value is paramount and *requires* that a woman be able to obtain an abortion when her health or life is at risk. For other faiths, a woman considers her health as one of several factors in making her personal decision about her pregnancy. For women of all of these faiths, restrictions on access to abortion (and, in particular, criminal statutes) that do not provide an exception for the health of the woman not only risk women's health but threaten their religious values.

The PCUSA offered another view in its official statement issued in 2006. The statement underscores the complexity of religious and moral views about abortion as individuals and denominations seek to discern God's will and to consider the life and health of both the woman and her fetus:

> In cases where problems of life or health of the mother arise in a pregnancy, the church supports efforts to protect the life and health of both the mother and the baby. When late-term pregnancies must be terminated, we urge decisions intended to deliver the baby alive.

217th General Assembly of PCUSA, *Overture 26 On Late-Term Pregnancy* (2006), *available at* http://www.pcusa.org/ga217/business/overtures/ovt2605.htm.

The United Methodist Church, recognizing the "tragic conflicts of life with life" that certain women face, has concluded that "continuance of a pregnancy which endangers the life or health of the mother, or poses other serious problems concerning the life, health, or mental capability of the child to be, is not a moral necessity. In such cases, we believe the path of mature Christian judgment may indicate the advisability of abortion." THE BOOK OF RESOLUTIONS OF THE UNITED METHODIST CHURCH 44, 129 (The United Methodist Publishing House 2004) (on file with RCRC).

Speaking specifically to the intact dilation and extraction procedure (which is only one of the procedures banned by the Act), the United Methodist Church's position states, "We oppose the use of late-term abortion known as dilation and extraction (partial-birth abortion) and call for the end of this practice except when the physical life of the mother is in danger and no other medical procedure is available, or in the case of severe fetal anomalies incompatible with life." *Id.* at 161. Thus, the United Methodist Church, while clearly concerned about the moral implications of intact dilation and extraction, supports exceptions for severe fetal anomalies incompatible with life and for certain circumstances when no other procedure is available; both of these exceptions are missing from the Act.

For many Jewish women, access to abortion where necessary to protect the life or health of the woman is a religious dictate. The United Synagogue of Conservative

Judaism stated in 1991 that, "under special circumstances, Judaism chooses and requires abortion as an act which affirms and protects the life, well being and health of the mother. . . ." *United Synagogue of Conservative Judaism Resolution on Abortion*, Passed at 1991 Biennial Convention, *available at* http://www.uscj.org/SocPolAbortion_Contr5481.html.

For women of faiths that encourage prayerful consideration of a woman's health, or in fact mandate that a woman's health be preserved, the Act's lack of a health exception is religiously intolerable. The Act leaves no room for such women to make highly personal decisions about their health in consultation with their faith and in accordance with their religious values. Rather, the Act legislates *one* moral path as *the* path for all women.

C. Many Religious Organizations And Individuals Have Fought *Against* Legislation That Risks Women's Health.

Religious groups and people of faith have consistently fought against abortion legislation that threatens the health of the woman.

The Religious Coalition for Reproductive Choice, which represents a great diversity of religious and theological organizations, institutions, and individuals, has fought vigorously at both the state and federal level to uphold *Casey* and ensure that abortion regulations protect the life and health of the woman, including the ability to obtain procedures that physicians believe best protect a woman's health. *See, e.g.*, RCRC, *Our Mission: A Message from Reverend Carlton W. Veazey, President and CEO*, *available at* http://www.rcrc.org/about/index.cfm; RCRC, *Statement of the Board of Directors on Campaign*

to Ban Abortion and "Partial-Birth Abortion Ban Bill" (June 4, 2003) (on file with RCRC); *Letters from RCRC to U.S. Senators* (Sept. 17, 1998) (on file with RCRC); *Letter from RCRC to President William Jefferson Clinton* (Apr. 29, 1996) (on file with RCRC) [hereinafter *1996 RCRC Letter to President Clinton*].

In 1996, seventy-one Protestant, Jewish, Unitarian Universalist, and other religious leaders signed a letter of support for President Clinton's veto of Congressional legislation that would have banned the dilation and extraction procedure, without exception for the life or health of the woman. The letter set forth the religious leaders' conviction

> that each woman who is faced with such difficult moral decisions must be free to decide how to respond, in consultation with her doctor, her family, and her God. Neither we as religious leaders, nor the president, nor Congress—none of us—can discern God's will as well as the woman herself. . . .

1996 RCRC Letter to President Clinton; *see also* Laurie Goodstein, *Religious Leaders Back Abortion Ban Veto*, The Washington Post, Apr. 30, 1996, at A4 (noting close to thirty original signatories to letter).

Individual women of different faiths also stepped forward in support of President Clinton's 1996 veto by sharing publicly their agonizing decisions, when faced with grave threats to their health and hopeless diagnoses for the fetuses they were carrying, to undergo the intact D&E procedure, which would be banned by the Act. President William Jefferson Clinton, *Remarks by the President on House Resolution 1833* (Apr. 10, 1996) (on file with RCRC).

Among them was Coreen Costello, who described herself and her husband as "very, very much pro-life, conservative Republicans." *Id.* at 3. Mrs. Costello learned when she was seven months pregnant that the fetus she was carrying was suffering from polyhydramnia, which also severely threatened Mrs. Costello's health. Mrs. Costello explained her painful decision about her daughter:

> She was dying and she would likely not survive any labor and there was no way I could deliver her. We had her baptized in utero. We named her Katherine Grace. We then realized that our only safe option was the procedure that . . . is being attempted to be outlawed.

Id.

Mary-Dorothy Line, who described herself and her husband as "practicing Catholics," shared how she learned, nineteen weeks into her pregnancy, that the fetus she was carrying had hydrocephalus, and how she had no option but to terminate the pregnancy.

> This was not our choice, for not only was our son going to die, but the complications of the pregnancy put my health in danger, as well. If I carried to term, he might die in utero, and the resulting toxins could cause a hemorrhage and possibly a hysterectomy. The hydrocephaly also meant that a natural labor risked rupturing my cervix and my uterus.

Id. at 2.

In 1998, notwithstanding the efforts of these religious individuals and organizations, a bill similar to that vetoed

by President Clinton in 1996 was introduced and passed in both the Senate and House of Representatives. President Clinton vetoed the 1998 bill, again citing its lack of an exception to protect the life or health of the woman. And, again, religious groups supported the President's veto.

For example, the Office for Church and Society of the United Church of Christ fought to sustain President Clinton's 1998 veto, by stating to the United States Senate the "overwhelming religious consensus within our church":

> Let the church and the religious community offer its advice on this issue, advice to the women facing the choice. Let the medical community offer its advice. But keep the government out of it. Protect the fundamental religious responsibility of a woman to make this decision about her own body and her own responsibility for the developing life within her.

Rev. Dr. Jay Lintner, *Statement on Partial-Birth Abortions Urging the Senate To Sustain President Clinton's Veto of H.R. 1122* (Sept. 17, 1998) (on file with RCRC).

Mark J. Pelavin, Associate Director of the Religious Action Center of Reform Judaism, issued a statement on September 17, 1998, on behalf of 870 congregations, 1,880 rabbis, and 1.5 million Reform Jews in support of President Clinton's veto. The statement read, in part, "Women are capable of making moral decisions, often in consultation with their clergy, families and physicians, on whether or not to have an abortion. We believe that religious matters are best left to religious communities, not politicians." Press Release, Religious Action Center of Reform Judaism, Statement of Mark J. Pelavin (Sept. 17, 1998) (on file with RCRC).

Claudia Crown Ades, a Jewish woman, shared the "spiritual journey" that started when she learned that the fetus she was carrying had the fatal chromosomal disorder Trisomy 13, and that the pregnancy posed a serious threat to her health, as well. Press Release, RCRC, Statement of Claudia Crown Ades (Sept. 17, 1998) (on file with RCRC).

> Our baby's brain was filled with fluid that prevented further development. He had a seriously malformed heart with a hole between the chambers hindering normal blood flow. A giant cyst, filled with intestinal matter, formed on the outside of his chest. He had hyperteloric eyes and much, much more. Our baby stood zero chance of survival.

Id.

In consultation with her doctors, her family, and God, Mrs. Ades decided to terminate her pregnancy to preserve her health and end the suffering of the fetus she was carrying. For her, it was a religious decision: "I believe that my instinct [to request an unscheduled ultrasound] was God's way of letting me know that my son wasn't meant to come into this world and that he was suffering inside me and dying. God showed me a way to end his suffering." *Id.*

In 2001, Maureen Mary Britell, a Catholic woman who, before 1994, "never thought I could imagine a reason why a woman would ever have an abortion," shared her agonizing story in a letter to members and supporters of the National Abortion Federation. *Letter from Maureen Mary Britell* (June 12, 2001) (on file with RCRC). In 1994, five months into her pregnancy, Mrs. Britell discovered that the fetus she was carrying suffered from the fatal anomaly anencephaly and had developed a brain stem but no brain.

Id. In order to protect Mrs. Britell's health, the doctors recommended an induction abortion whereby Mrs. Britell's labor would be induced and the umbilical cord cut upon delivery, thus allowing the fetus to die after delivery. *Id.* Mrs. Britell wrote about how she struggled with the decision:

> I am a Catholic and the idea of ending my pregnancy was beyond my imagination. I turned to my parish priest for guidance. He counseled me for a long time, and in the end, he agreed that there was nothing more I could do to help my daughter. With the support of our families and our priest, [my husband] and I made the decision to end the pregnancy.

Id.

Mrs. Britell's doctors induced her labor as planned, but there were complications, and the doctors had to cut the umbilical cord while the fetus was still in the birth canal, in order to avoid serious health complications for Mrs. Britell. This "partial birth abortion" was necessary to preserve Mrs. Britell's health, and it would be outlawed under the Act. *Id.*

In each of these instances, religious organizations, leaders, and individuals fought against legislation which did not adequately safeguard the lives and health of women, and they did so in consultation with—and in many cases compelled by—their religious beliefs.

D. Many Religious Democracies Abroad Recognize The Importance Of Safeguarding Women's Health.

This Court has often looked to the experiences of other nations to illuminate the nature of individual rights. *See, e.g., Roper v. Simmons*, 543 U.S. 551, 576 (2005) (citing global condemnation of capital punishment for juvenile offenders); *Lawrence v. Texas*, 539 U.S. 558, 573 (2003) (citing European and British law to clarify the values of Western civilization and of Judeo-Christian moral and ethical standards). Of particular significance here is the fact that many democracies with either a state religion or a strong religious majority have enacted abortion laws with exceptions to protect the health of the woman.

According to a study by the United Nations of abortion law and policy, Protestant and Orthodox Christian countries overwhelmingly approve of protecting the health and life of the pregnant woman. U.N. Dep't of Econ. & Soc. Affairs Population Div., Abortion Policies A Global Review Volume I Afghanistan to France, U.N. Doc. ST/ESA/SER.A/187, U.N. Sales No. E.01.XIII.10 (2001); U.N. Dep't of Econ. & Soc. Affairs Population Div., Abortion Policies A Global Review Volume II Gabon to Norway, U.N. Doc. ST/ESA/SER.A/191, U.N. Sales No. E.01.XIII.18 (2001); U.N. Dep't of Econ. & Soc. Affairs Population Div., Abortion Policies A Global Review Volume III Oman to Zimbabwe, U.N. Doc. ST/ESA/SER.A/196, U.N. Sales No. E.02.XIII.5 (2001). Available at http://www.un.org/esa/population/publications/abortion/ [hereinafter *United Nations Study*].

The law of the United Kingdom permits abortion after 24 weeks gestation to protect the health or life of the

woman, or if the fetus is severely handicapped. Human Fertilisation and Embryology Act, 1990, c. 37, § 37 (U.K.). The Church of England has stated that "there can be strictly limited conditions under which [abortion] may be morally preferable", and Anglicans "may come to different conclusions about the proper course of action in particular cases." The Church of England, *Abortion: A Briefing Paper*, (2005), *available at* http://www.cofe.anglican.org/info/socialpublic/abortion.html.

Furthermore, despite the Vatican's comprehensive ban on abortion, the majority of Catholic countries permit abortion when it is necessary to protect the health or life of the pregnant woman.[3] *See, e.g.*, Gazz. Uff. Della Repubblica Italiana, Part I, 2 May 1978, No. 140, pp. 3642-3646 (Italy) (abortion may be performed after the first 90 days if a serious threat to the woman's physical or mental health has been diagnosed); Law No. 11179, 21 December 1984, Cód. Pen., Artículo 86 (Arg.) (although generally prohibited, abortion to prevent harm to the woman's life or health is not punishable); *see generally United Nations Study*; Harvard Law School, *Abortion Laws of the World*, Annual Review of Population Law, http://annualreview.law.harvard.edu/annual_review.htm (last visited Aug. 11, 2006).

Israel also approves of abortion on broad medical grounds, including the protection of the health or life of the woman. *United Nations Study*. And eleven Islamic nations (Algeria, Azerbaijan, Bahrain, Jordan, Kyrgyzstan, Malaysia, Morocco, Tajikistan, Tunisia, Turkmenistan and

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[3] The laws of Argentina, Bolivia, Costa Rica, Guatemala, Italy, Liechtenstein, Luxembourg, Panama, Peru, Portugal and Spain protect both the health and life of the woman.

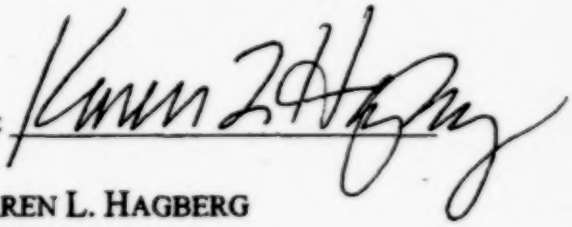
Uzbekistan) permit abortions to protect the health or life of the pregnant woman. *Id.*

These countries represent a diversity of political and religious positions, but they share an ability to integrate principles of faith with a state interest in regulating abortion in such a way as to protect both the health and the life of a pregnant woman.

CONCLUSION

For the foregoing reasons, the Court should affirm the decisions of the United States Courts of Appeal for the Eighth and Ninth Circuits.

Dated: September 20, 2006

By: 

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